

REMARKS

1. Applicant thanks the Examiner for his observations.

5 2. It should be appreciated that Applicant has elected to amend Claims 87 and 110 solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such cancellations and amendment, Applicant has not and does not in any way narrow the scope of protection to which Applicant considers the invention herein to be
10 entitled. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission

3. Claim 87 stands rejected under 35 USC §112, second paragraph as being in
15 definite for failing to particularly point out and distinctly claim the subject matter of the invention. Applicant has amended the offending expression to read "a medical profile for said patient." As such, the rejection of Claim 87 under 35 USC §112, second paragraph is deemed to be overcome.

20 4. Claim 87 stands rejected under 35 USC § 103(a) as being unpatentable over Hawkins in view of Sato and further in view of U.S. Patent No. 5,619,991 ("Sloane"). Applicant respectfully disagrees.

The Examiner relies on Hawkins as teaching a workflow engine. The Examiner incorrectly interprets Hawkins' proxy server as being the same as, or equivalent to a workflow engine. A proxy server is widely understood to function as a firewall. That is, it serves to isolate and shield a private network from a public network such as the Internet. Claim 1 specifically describes the invention as including a workflow engine. A workflow engine is a distinctly different component from a proxy server, they cannot be said to be structurally or functionally equivalent. The workflow engine of the current invention gives the invention process management capabilities neither taught nor suggested by Hawkins. Nor is there any teaching or suggestion of a workflow engine in either Sato or Sloane.

The cited references, either separately or in combination fail to teach or suggest "attaching said patient's medical profile to said query message by said workflow engine."

The Examiner relies on Hawkins as teaching "routing said query message with said attached medical profile to a physician-operated computer at a network location separate from said patient-operated computer and said workflow engine." Again, the references, either separately or in combination fail to teach or suggest, "routing said query message with said attached medical profile..."

The Examiner relies on Sato as teaching messaging between patient and physician. The Examiner incorrectly characterizes Sato as teaching a messaging system between patient and physician. The prior art must be considered in its entirety, including

disclosures that teach away from the claims. MPEP 2141.02. Here, Sato actually describes a wide area communication system wherein a patient selects a physician, requests services from the physician, and then receives services interactively and in real time over video terminals, as an alternative to seeing the physician in person (col. 3, line 48 to col. 4, line 58). Thus, Sato is overwhelmingly directed to a system for promoting real-time, face-to-face interactive communication between physician and patient. Any asynchronous exchange of messages between physician and patient is incidental to Sato's primary purpose of providing real-time, interactive communication between patient and physician that are remote from each other.

In stark contrast, the invention is directed to a messaging system based on asynchronous exchange of messages in query-and- response fashion between patient and physician, thereby significantly reducing the need for real-time, interactive communication. Thus, Sato teaches away from the claimed invention. Therefore one skilled in the art, considering Hawkins, would never be led to the teachings of Sato in order to derive the Claimed invention.

The Examiner relies on Sloane as teaching generating a problem-specific, patient-specific electronic form for said patient to complete by said first medical messaging wizard from a problem-related database and a medical profile for said patient. Sloane actually teaches that the patient interacts with an expert system, apparently in real-time (col. 4, line 3 to line 9, emphasis added). What is more, the interaction with the expert system is supplemented with real-time interaction with human attendants or the physician himself. Accordingly, Sloane teaches gathering of information through a real-

time interaction. Applicant stresses again that the invention provides asynchronous exchange of messages that reduce the need for real-time interaction, whether with an expert system, paraprofessionals, or physicians. Thus, Sloane teaches away from the invention. Accordingly, the practitioner having an ordinary level of skill would not be lead
5 to Sloane.

While Applicant believes Claim 87 to be patentably distinct from the cited references, Applicant amends Claim 87 to describe the messaging method as being asynchronous. Support for the amendment is found in Figure 3A, and on page 26, line 29 to page 31,
10 line 11 of the specification. As such, Claim 87, and all Claims depending therefrom are deemed to be in allowable condition.

Applicant notes that the Examiner relies heavily on legal precedent to support a finding of obviousness. Applicant respectfully reminds the Examiner that legal precedent can
15 only provide the rationale supporting obviousness if the facts in the case are sufficiently similar to those in the application. MPEP 2144. Applicant respectfully requests that the Examiner point out how the facts of each case cited are sufficiently similar to the case at hand that they can be relied to support the Examiner's finding of obviousness.

20 While legal precedent may be used as a source in formulating an obviousness rationale, it may not be used to surmount an evidentiary requirement. The Examiner is respectfully reminded that all claim limitations must be taught or suggested by the prior art. MPEP 2143.03. Furthermore, all words in a claim must be considered in judging the patentability of that claim against the prior art MPEP 2143.03.

5. Claim 110 stands rejected under 35 USC § 103(a) as being unpatentable over Hawkins in view of Sato and further in view of Sloane. Applicant respectfully disagrees. As discussed above, there is no teaching or suggestion in the cited references of a workflow engine or of attaching said patient's medical profile to said query message by said workflow engine. Accordingly, the rejection of Claim 110 and all Claims depending therefrom is deemed to be improper.

CONCLUSION

In view of the above, the Application is deemed to be in allowable condition.

5 Accordingly, the Examiner is earnestly requested to withdraw all rejections and allow the Application to pass to issue as a U.S. Patent. Should the Examiner have any questions regarding the Application, he is urged to contact Applicant's attorney at the telephone number given below.

10

Respectfully submitted,



15

Michael A. Glenn

Reg. No. 30,176

20

Customer No. 22862